

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
IONICS, INCORPORATED,	)	
Plaintiff	)	
	)	
	)	
v.	)	Civil Action No. 04-11943-PBS
	)	
	)	
GLOBAL ENERGY, INC.,	)	
Defendant.	)	
_____	)	

**PLAINTIFF'S LOCAL RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL  
FACTS AND LEGAL ELEMENTS  
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 (a) and Local Rules 7.1 (B)(1) and 56.1, Plaintiff Ionics, Incorporated ("Ionics") submits this statement of undisputed material facts and legal elements in support of its motion for summary judgment.

**Undisputed Material Facts**

1. In September, 2000, Ionics and Wabash River Energy, Ltd. ("WRE"), a wholly owned subsidiary of Global, entered into a contract ("the Contract") for Ionics to provide WRE with certain water purification equipment (the "equipment") and technical services. The Contract required WRE to pay Ionics an agreed-upon price for the equipment in portions on the completion of contractual milestones. Affidavit of Gary Podrabsky (hereinafter "Podrabsky Affidavit"), Exhibit A.

2. The delivery of the equipment took place over time during 2000 and 2001, and Ionics provided the equipment in full compliance with the Contract with WRE. Podrabsky Affidavit, ¶2.

3. WRE has paid only a portion of the contract price. The outstanding debt owed under the Contract, through March 3, 2004, is \$1,979,278.00. Podrabsky Affidavit, ¶4.

4. On March 4, 2003, Global, in consideration for Ionics' forbearance from taking immediate legal action against WRE, its wholly owned subsidiary, entered into a Guaranty Agreement (the "Guaranty") with Ionics. Id., ¶5, Exhibit B.

5. Under the Guaranty, Global agreed to pay the outstanding debt owed by WRE to Ionics, plus accrued interest on the debt if WRE did not pay such debt on or before June 30, 2004. Id., Exhibit B, ¶1.

6. WRE did not pay Ionics the balance of the contract price on or before June 30, 2004. Podrabsky Affidavit, ¶7.

7. By letter dated June 30, 2004, Ionics demanded payment from Global pursuant to the Guaranty. Id., ¶8, Exhibit C.

8. Global has not paid Ionics the outstanding debt or accrued interest on the Contract pursuant to the Guaranty. Id., ¶8.

### **Legal Elements**

9. Defendant Global Energy, Inc. ("Global") breached a guaranty agreement with Plaintiff Ionics, Incorporated ("Ionics"). All of the legal elements of a breach of guaranty action exist: (1) a primary obligation; (2) a guaranty of the primary obligation by Global in writing; (3) default of the primary obligation; (4) and full compliance of Ionics with all of the terms of the

original contract and the guaranty. See John B. Dreary, Inc. v. Crane, 4 Mass. App. Ct. 719 (1976) (Exhibit 3).

Dated: September 13, 2004

IONICS, INCORPORATED.

By its Attorneys,

A handwritten signature in cursive script, reading "Kim M. Clarke", is written over a solid horizontal line.

David B. Mack (BBO# 631108)

Kim M. Clarke (BBO# 657711)

NIXON PEABODY LLP

100 Summer Street

Boston, Massachusetts 02110

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) Civil Action No. 04-11943-PBS

GLOBAL ENERGY, INC.,  
Defendant.

## LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1 counsel for Plaintiff Ionics, Incorporated (“Ionics”) hereby certifies that counsel for Ionics conferred with counsel for Defendant Global Energy, Inc. and attempted in good faith to resolve or narrow the issues raised in *Plaintiff’s Motion for Summary Judgment* but were unable to do so.

Dated: September 13, 2004

Kim M. Clarke

David B. Mack (BBO# 631108)

Kim M. Clarke (BBO# 657711)

NIXON PEABODY LLP

100 Summer Street

Boston, Massachusetts 02110

(617) 345-1000

*counsel for*

**Ionics, Incorporated**

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**LOCAL RULE 7.3 CORPORATE DISCLOSURE STATEMENT OF  
PLAINTIFF IONICS INCORPORATED**

Pursuant to Local Rule 7.3, Plaintiff Ionics, Incorporated, by and through its counsel,  
states that it does not have a parent corporation and that no publicly held company owns 10% or  
more of its stock.

Respectfully submitted

IONICS, INCORPORATED

By its counsel,



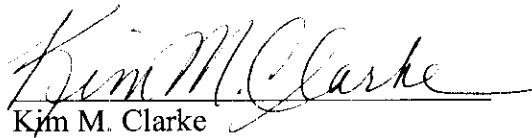
Dated: September 13, 2004

David B. Mack (BBO# 631108)  
Kim M. Clarke (BBO# 657711)  
NIXON PEABODY LLP  
100 Summer Street  
Boston, Massachusetts 02110  
(617) 345-1000

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, September 13, 2004, a true and accurate copy of the herein Plaintiffs' (1) Motion for Summary Judgment; (2) Memorandum in Support of its Motion for Summary Judgment; (3) Affidavit of Gary Podrabsky; (4) Rule 56.1 Statement of Undisputed Material Facts and Legal Elements in Support of its Motion for Summary Judgment; (5) Local Rule 7.1 Certification; and (6) Local Rule 7.3 Corporate Disclosure Statement was served by overnight mail on counsel for Defendant Global Energy, Inc.:

Jason W. Morgan, Esq.  
Drohan, Hughes, Hoffman, & Tocchio, P.C.  
175 Derby Street, Suite 30  
Hingham, MA 02043

  
Kim M. Clarke